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June 30, 2021

The Honorable Merrick B. Garland
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Via Certified Mail

Re: *Kivo v. Credit Control Services, Inc.*
Civ. No. 2:21-cv-02985-BMC (E.D.N.Y.)
Notice of Constitutional Challenge Pursuant to Fed. R. Civ. P. 5(a)

Dear Attorney General Garland:

Pursuant to Fed. R. Civ. P. 5(a), enclosed please find a Notice of Constitutional Challenge filed today in connection with Defendant Credit Control Services, Inc.'s Original Answer to the Class Action Complaint in this matter.

Respectfully submitted,

GORDON REES SCULLY MANSUKHANI, LLP



Lori J. Quinn

Encl.

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

MELISSA KIVO,
on behalf of Plaintiff and a class,

Plaintiff,

Civil No.: 2:21-cv-02985-BMC

v.

CREDIT CONTROL SERVICES, INC.
doing business as
CREDIT COLLECTION SERVICES,

Defendant

**DEFENDANT CREDIT CONTROL SERVICES, INC.'S
NOTICE OF CONSTITUTIONAL CHALLENGE**

Defendant Credit Control Services, Inc. d/b/a Credit Collection Services (“CCS”), hereby serves Notice pursuant to Fed. R. Civ. P. 5.1(a) that its Answer in this case raises constitutional questions.

Plaintiff Melissa Kivo (“Plaintiff”) filed this putative class action lawsuit alleging violations of the Fair Debt Collect Collection Practices Act, 15 U.S.C. § 1692, *et al.* Specifically, Plaintiff alleges that CCS violated 15 U.S.C. § 1692b(c), which bars debt collectors from communicating with most third parties in connection with the collection of any debt without the consent of the consumer who owes the debt or the express permission of a court of competent jurisdiction. Plaintiff asserts that CCS transmitted information to a letter vendor, which then printed and mailed a collection letter to Plaintiff on behalf of CCS. The basis of this claim appears to arise out of a recent 11th Circuit decision, *Hunstein v. Preferred Collection and Mgmt. Servs., Inc.*, 994 F.3d 1341 (11th Cir. 2021).

In its Answer, CCS raises the following constitutional challenges:

1. To the extent that 15 U.S.C. § 1692c(b) imposes a prior restraint on commercial speech, does that prior restraint violate the U.S. Const. amend. I?
2. If the Fair Debt Collection Practices Act permits a debt collector to use a service provider such as Western Union to transmit correspondence to a consumer via telegram but not to use a print-and-mail vendor to perform the same service, is 15 U.S.C. § 1692c(b) void for vagueness in violation of the U.S. Const. amend. V?

Dated: June 30, 2021

Respectfully submitted,

GORDON REES SCULLY MANSUKHANI, LLP

By: 

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*Attorneys for Defendant, Credit Control Services,
Inc. d/b/a Credit Collection Services*

CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2021, a true and accurate copy of the foregoing Rule 5.1 Notice was filed and served upon the following parties and participants via ECF:

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Attorneys for Plaintiff

I hereby certify that on June 30, 2021, a true and accurate copy of the foregoing Rule 5.1 Notice was served via certified mail, postage prepaid, return receipt requested, upon:

The Honorable Merrick Garland
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

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